IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

OP.No. 25080 of 2001(I)

PETITIONER:

K.RAMACHANDRAN NAIR, DRAFTSMAN
GRADE I, TECHNICAL HIGH SCHOOL,
CHERUVATHUR, KASARAGOD DISTRICT.

BY ADV. SRI.P.M.PAREETH

RESPONDENTS:
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1. **THE STATE OF KERALA, REP.BY PRINCIPAL,**
   SECRETARY TO GOVERNMENT, HIGHER
   EDUCATION (L) DEPARTMENT,
   GOVERNMENT OF KERALA, GOVERNMENT
   SECRETARIAT, THIRUVANANTHAPURAM.

2. **DIRECTOR OF TECHNICAL EDUCATION,**
   THIRUVANANTHAPURAM.
3. **SUPERINTENDENT, TECHNICAL HIGH SCHOOL,**
   CHERUVATHUR, KASARAGOD DISTRICT.

BY GOVERNMENT PLEADER SMT.SMITHA SUKUMARAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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OP. NO.25080/2001

ORDER ON CMP. NO.40880/2001 IN OP. NO.25080/2001

DISMISSED

0509.2007 **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PROVISIONAL GRADATION LIST OF ASST. LECTURERES AND EQUATED CATEGORIES DT. 18.12.98 NO.EG1/33026/97 OF 2ND RESPONDENT.

EXT.P2:- COPY OF THE GOVERNMENT ORDER DT. 14.12.95 NI.1026/95/(66) FIN OF 1ST RESPONDENT.

EXT.P3:- COPY OF THE GOVERNMENT CLARIFICATION NO.24208/PRU.1/96/FIND. DT. 24.6.96.

EXT.P4:- COPY OF THE ORDER DT. 7.10.98 ISSUED BY THE 3RD RESPONDENT VIDE NO.A2/114/96.

EXT.P5:- COPY OF THE ORDER DT. 2.6.97 NO. EC1/14959/97 ISSUED BY THE 2ND RESPONDENT.

EXT.P6:- COPY OF THE ORDER DT. 27.11.97 NO. EC4/27180/93/DTE ISSUED BY THE 2ND RESPONDENT.

EXT.P7:- COPY OF THE ORDER DT. 15.3.01 NO.EC3/25989/99/DTE OF 2ND RESPONDENT.

EXT.P8:- COPY OF THE LETTER NO.EB4/18604/2000 DT. 29.8.2000 ISSUED BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT.

EXT.P9:- COPY OF THE REPRESENTATION DT. 5.9.2000 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P10:- COPY OF THE JUDGMENT DT. 5.9.2000 IN OP. NO.28208 OF 2000 OF THIS HONOURABLE COURT.

EXT.P11:- COPY OF THE ORDER DT. 19.7.01 NO.12851.J3/2001/H.EDN. ISSUED BY 1ST RESPONDENT.

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EXT.P12:- COPY OF THE ORDER DT. 11.7.01 IN CMP. 33157/01 IN OP. 20457/01 OF THIS HONOURABLE COURT.

EXT.P13:- COPY OF THE ORDER DT. 14.7.01 IN CMP. NO.33157/2001 IN OP. 20457/01 OF THIS HONOURABLE COURT.

EXT.P14:- COPY OF THE COMMUNICATION DT. 17.11.01 TO THE 3RD RESPONDENT.

EXT.P15:- COPY OF THE ORDER OF REFIXATION ISSUED BY THE 3RD RESPONDENT, DT. 13.12.01.

EXT.P16:- COPY OF THE GAZETTE NOTIFICATION SRO NO.134/72 PUBLISHED IN KERALA GAZETTE NO.12 DT. 21.3.72.

/TRUE COPY/

P.A. TO JUDGE

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Thottathil B. Radhakrishnan, J.

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O.P.No.25080 of 2001

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Dated this the 5th day of September, 2007.

JUDGMENT

The short issue that arises for decision in this writ petition is as to whether the petitioner was fully qualified to hold the post of Assistant Lecturer and therefore entitled to the scale of pay of Assistant Lecturer though promoted as Draftsman Gr-I. In the impugned Ext.P11, the Government have taken the stand that the petitioner had not obtained 60% marks in Diploma, which is the qualification prescribed for appointment as Assistant Lecturer and that he has only a Diploma, which would be sufficient for being promoted as Draftsman Gr-I. Accordingly, the Government took the stand that he, not having acquired the qualification of 60% marks in Diploma, is not entitled to the scale of pay of Assistant Lecturer.

2. The contention of the petitioner is that he has Diploma in Mechanical and Diploma in Technical Teachers Training. On such basis, he contends that on

the basis of Ext.P16 Government Order, G.O.(MS) No.61/72/Edn. dated 15-3-1972, the Diploma issued by the Technical Teachers Training Institute to those who have passed the Diploma in Engineering or Technology will be recognised as an alternative qualification in lieu of Diploma in Engineering or Technology with 60% marks in the final examination. If that be so, the petitioner, who possesses the Diploma in Engineering or Technology with a further Diploma issued to him from a Technical Teachers Training Institute, is entitled to be treated as one who has gained 60% marks in Diploma in Engineering or Technology in the final examination.

3. Though on 20-7-2007, an order was issued by this Court on I.A.No.9697 of 2007 requiring the respondents to state whether the said Ext.P16 Government Order dated 15-3-1972 is in force and whether the petitioner can be treated as having the prescribed qualification for promotion on the basis of the Government Order, the respondents are yet to place any materials on record regarding that.

Under the aforesaid circumstances, this writ petition is disposed of directing the Government to re-consider Ext.P11 and consider the claim of the petitioner on the basis of Ext.P16 Government Order, if that Government Order was in force at the relevant time when the petitioner was appointed as Draftsman Gr-I. To facilitate such a decision making process, Ext.P11 is quashed. A final decision shall be taken as aforesaid after affording the petitioner an opportunity of being heard and such decision shall be rendered within an outer limit of four months from now since the petitioner has already retired. On the basis of such decision, the question of releasing the withheld DCRG and restoration of any other available benefits will be considered and final decision shall be taken in relation to that also within the aforesaid period.

Thottathil B.Radhakrishnan,
Judge.

sl.

Thottathil B. Radhakrishnan, J.

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O.P.No.25080 of 2001

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JUDGMENT

Dated:5-9-2007